

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
REPLY BRIEF**

75-7287
75-7320

To be argued by
SAUL WEINSTEIN

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

UNITED BANK LIMITED,

Plaintiff-Appellee-Appellant,

vs.

COSMIC INTERNATIONAL, INC.,

Defendant-Appellee.

JANATA BANK and AMIN JUTE MILLS, LTD.,

Plaintiffs-Appellants,

vs.

COSMIC INTERNATIONAL, INC. and IRVING TRUST
COMPANY,

Defendants-Appellees.

SONALI BANK and NISHAT JUTE MILLS, LTD.,

Plaintiffs-Appellants,

vs.

IRVING TRUST COMPANY and COSMIC
INTERNATIONAL, INC.,

Defendants-Appellees.

NISHAT JUTE MILLS, LTD. and NATIONAL BANK OF
PAKISTAN,

Plaintiffs-Appellees-Appellants.

vs.

COSMIC INTERNATIONAL, INC.,

Defendant-Appellee.

**REPLY BRIEF FOR PLAINTIFFS-APPELLANTS,
JANATA BANK AND AMIN JUTE MILLS, LTD. AND
SONALI BANK AND NISHAT JUTE MILLS, LTD.**

NIERENBERG, ZEIF & WEINSTEIN

Attorneys for Plaintiffs-Appellants,

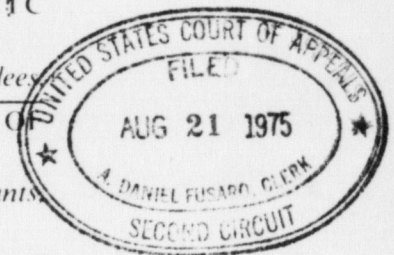
Janata Bank and Amin Jute Mills, Ltd. and

Sonali Bank and Nishat Jute Mills, Ltd.

230 Park Avenue

New York, New York 10017

OR 9-1455



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**REPLY BRIEF FOR PLAINTIFFS-APPELLANTS,
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INTRODUCTION

We take this opportunity to reply to several of the points set forth in the Briefs of the Appellees, claimants from Pakistan in these consolidated appeals.

We will not, of course, respond to every statement made in these Briefs. If we have not responded to a statement in Appellees Briefs, it does not necessarily indicate that we agree with any statement not so contraverted. Many statements in the Briefs of the Appellees have been adequately dealt with in our original Brief and there is no purpose to repeat the arguments contained therein.

A. THE CREDITORS OF COSMIC ARE IN BANGLADESH.

Attorneys for United Bank Limited have argued that the creditors of Cosmic were located in Pakistan rather than in Bangladesh. The uncontradicted evidence in this case is clearly to the contrary. In six of the seven Trust Receipts signed by Cosmic, Irving was acting as agent for United Bank Limited, Laldighi East, Chittagong, East Pakistan. (J.A. 124-137).

If that evidence is not sufficient to convince the Court that the creditor was in Bangladesh, it is clear that the

Jute Mill was located there. In each instance, the Jute Company had its only mill in what was formerly called East Pakistan (now Bangladesh). The Stipulation in the U.B.L. case provided that "Amin Jute Mills, Ltd. owned and operated its only mill at Chittagong, East Pakistan, (now Bangladesh) which produced the goods involved in this action." (J.A. 48). At the time the Stipulation was signed, counsel for U.B.L. had some reservation with respect to the word "only" in that Stipulation, but after apparently checking as to the facts, never sought to delete that word. Amin also had its registered office in East Pakistan (J.A. 47). Nishat, the company involved in the other action, had its head office and registered office in Karachi, Pakistan, but had its only mill in East Pakistan. (J.A. 140).

It was these Jute Companies which were ultimately to be the beneficiaries of the remittance from the United States. They had sold the jute in question.

Since these companies were in the business of manufacturing and selling the jute that they manufacture, the location of their Jute Mills is of course of prime importance. To argue that because these companies had offices in West Pakistan,

action arose in Bangladesh, the Courts in Bangladesh would have jurisdiction to enforce this debt.

C. THE NEW BANKS CREATED UNDER THE BANGLADESH BANKS NATIONALIZATION ORDER, 1972, WERE OBLIGATED TO REPAY THEIR DEPOSITORS OUT OF THE ASSETS TRANSFERRED TO THEM.

The Bangladesh Banks Nationalization Order, 1972, transferred to the newly created banks the "undertaking" of the existing banks. Paragraph 7 of that Order defined the undertaking as including various assets but also defined the undertaking as to include "liabilities and obligations of whatever kind then subsisting of the existing bank in relation to the undertaking within the territory of Bangladesh."

Respondents would ignore this transfer of liabilities to the newly created banks and only argue that the Bangladesh Banks Nationalization Order transferred to the newly created banks various assets of the Pakistani Banks.

Clearly, under the Order, liabilities were passed on to the newly created banks as well and these liabilities included the obligations of the former branches to their

depositors. ARAB BANK v. BARCLAYS BANK [1954] A.C. 495;
DELHI CORP. AND GENERAL MILLS CO. v. HARMAN SINGH, A.I.R.
1955 Vol. 42 P. 590 (Supreme Court); ARUNACHALAM CHETTIAR
v. MURUGAPPA CHETTIAR, A.I.R., 1956 Madras Ser. 629.

Respondents have argued that National Bank of Pakistan was all one bank and U.B.L. was all one bank. Thus, they claim, the Bank., i.e., National Bank of Pakistan or U.B.L. is entitled to the assets of the former branches. However, not even a still voice is raised by these Respondents asserting that these unified banks retain some liability to the depositors of their former branches. Thus, while apparently renouncing liabilities to the creditors of these branches including the depositors therein, these Banks seek to assert title to the assets of the former branches. The Respondents cannot have the assets without the liabilities.

D. NEITHER THE CONSTITUTION OF PAKISTAN NOR
THAT OF BANGLADESH REQUIRE PAYMENT OF
ADEQUATE COMPENSATION ON ANY GOVERNMENTAL
TAKING.

U.B.L. argues on Page 18 of its Brief that the District Court correctly decided that the enforceability of the Bangladesh Decrees with respect to these claims is a question

of United States Law. This argument, of course, presupposes that the Act of State Doctrine is not involved.

If the Act of State Doctrine is not involved, then this Court must apply New York Conflicts Law to determine which law would be used in determining the validity of the Nationalization Decree. ERIE RAILROAD CO. v TOMPKINS, 304 U.S. 64, 58 S.C. 817, 82 L. Ed. 1188, 114 A.L.R. 1487 (1938), KLAXON CO. v. STENTOR ELECTRIC MANUFACTURING INC., 313 U.S. 487, 61 S.C. 1020, 85 L.Ed. 1477 (1941).

Indeed, Professor Henkin whose article is cited on Page 7 of the U.B.L. Brief, states that the Court must decide which law governed the issue and can only refuse to apply that law if it were contrary to the public policy of the forum.

As we have shown in our main Brief, what was done by Bangladesh is hardly inconsistent with the policies of the forum. Bangladesh has taken assets belonging to nationals of a nation at war with it. This is not only consistent with the policy of our forum but exactly what we have done in our nation since its inception. True, the Fifth Amendment

provides that private property shall not be taken for public use without just compensation. But the real parties to this litigation, i.e., Pakistan and Bangladesh, have expressly renounced our concept of due process, and that concept is not always applied by us in wartime in any event.

Counsel for National Bank of Pakistan has attempted to draw a distinction between Article 42 of the Constitution of the People's Republic of Bangladesh and Article 24 of the Constitution of the Islamic Republic of Pakistan. These articles are reproduced in the Stipulation of Facts in both of these cases (J.A. 56, 154). While Article 24 of the Constitution of Pakistan requires the payment of compensation, and Article 42 of the Constitution of the People's Republic of Bangladesh may not require the payment of compensation, Article 24 of the Pakistani Constitution expressly provides that the adequacy "or otherwise" of such compensation is not to be called in question in any Court. This is hardly consistent with our notion of due process of law where the adequacy of compensation paid on any Governmental taking must be considered by the Courts. The purpose of our Courts inquiring into the adequacy of any compensation on any Governmental taking is clear. A promise to pay compensation

whose adequacy cannot be challenged is but an illusory promise akin to no promise to pay compensation at all. Thus, the Constitutional provisions of the two countries having expressly renounced our concept of due process, there is no distinction in reality between Article 42 of the Bangladesh Constitution and Article 24 of the Pakistani Constitution.

CONCLUSION.

For all the reasons stated in our main Brief as well as those stated in this Reply Brief, we respectfully request that the Court reverse the determination of Judge Brieant and award the sums in question to the plaintiffs from Bangladesh.

Respectfully submitted,

NIERENBERG, ZEIF & WEINSTEIN
Attorneys for Plaintiffs-
Appellants, Janata Bank and
Amin Jute Mills, Ltd. and
Sonali Bank and Nishat Jute
Mills, Ltd.

SAUL I. WEINSTEIN,
Of Counsel.

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UNITED BANK LIMITED

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against

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Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

James A. Steele

being duly sworn,

deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
310 W. 146th St., New York, N. Y.

That on the 21st day of August 19 75at see attached

deponent served the annexed Reply Brief
see attached

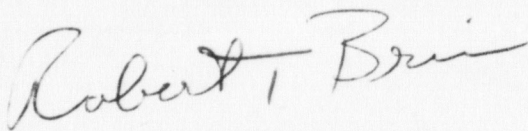
upon

the attorneys in this action by delivering ² a true copy ^{of} thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the herein,

Sworn to before me, this 21st
day of August 19 75

Print name beneath signature

JAMES A. STEELE



ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977

